

Remarks

Drawings

The drawings were objected to under 37 CFR 1.83(a). Claim 11 has been amended to correct a drafting error. The term "holder" has been corrected to state "transport device." This correction is believed to alleviate the drawing rejection regarding the "holder" and also provides antecedent basis for "the transport device" in claim 19. The drawings were further objected to for not showing "the frame with the diameter increasing from the gripping rim in both 'spatial directions running vertical to the test field plane.'" Applicant directs the Examiner to Figs. 7-11 and 14 which provide support for such a limitation. Frame 3 includes gripping rim 24. The test field 5 is substantially planar. The rim has portions of increased diameter relative to the gripping rim 24 both above and below the gripping rim 24. Accordingly, Applicant believes that such a limitation is supported by the specification and depicted in the drawings. The drawings were further objected to for failing to show "the gripping device comprising a part of the evaluation instrument." Applicant directs the Examiner to paragraph 45 which starts "Within the evaluation instrument, not shown completely in FIG. 1, the test elements 1 are moved between various functional positions by means of a transport device 8." Furthermore, paragraph 46 starts "The transport device 8 grips and transports one test element 1 at a time by means of a gripping device 20." Accordingly, the Examiner is referred to Fig. 1 for support of "the gripping device is a part of the evaluation instrument." Removal of the objections is respectfully requested.

Specification

The specification was objected to as failing to provide proper antecedent basis for claimed subject matter. Applicant has corrected claim 11 which is believed to alleviate this objection. Removal of the objection is respectfully requested.

Claim Rejections

Claims 11-13, 17-18, and 38-43 are rejected under 35 U.S.C. 112 p.(2) as being unclear for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended the independent claims to alleviate the rejections. Removal of the rejections is respectfully requested.

Claims 11-13, 17, and 38-43 are rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,075,079 to Kerr et al. (hereinafter "Kerr") in view of United States Patent No. 5,507,388 to Kildal et al. (hereinafter "Kildal") in further view of United States Patent No. 7,205,159 to Cole et al. (hereinafter "Cole").

The Official Action states that "It would have been within the ordinary skill of an artisan at the time the invention was made to have profiled the sides of the test elements in the modified apparatus of Kerr in a similar manner, in order to provide better engagement between the gripping device and test elements. It is unclear how such a combination would arrive at "better engagement between the gripping device and test elements." Kerr describes a bench mounted system of appreciable size. Such a system experiences consistent gravitational forces upon the system and the slides. The engagement provided by Kerr is designed for those forces. Gripping that prevents upward movement against gravity is not necessary in that the orientation of the system as a bench top system is known. The system of Kerr has no need for the profiled sides of Kildal. The rejection that places them there is the product of hindsight reconstruction attempting to cobble together the elements of the claims. Additionally, as noted by the Official Action, Kildal teaches slides having exactly the opposite configuration as that claimed. Teaching of the opposite of what is claimed does not obviate what is claimed. Finally, while the rejection is stated to include Cole, no explanation is provided as to how Cole is involved. In summary, there is no teaching or suggestion within any of the references suggesting the proposed combination. Furthermore, one of ordinary skill in the art would not be led to make the proposed combination in that the features of Kildal are unnecessary and extraneous to the teachings of Kerr.

Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over Kerr in view of United States Patent No. 2,608,433 to Marbeuf (hereinafter "Marbeuf"). The Official Action states that while Kerr does not teach the distance between the gripping arms decreasing towards the "front" of the gripping device, that such feature is well known as shown in Marbeuf. The Official Action states that such a combination would result in improved engagement between the gripping device and the test element. Applicant notes that improved engagement is only achieved if the gripping device can somewhat surround the test element. As shown in Marbeuf, the portion of the tongs having the distance between the gripping arms decreasing is disposed on a far side of the test tube to achieve its gripping. As

shown in Fig. 16 of Kerr, slide transfer means 18 is prevented from extending to and grabbing the far end of slides by both the extension portions 268 and 270 that limit how much of the slide can be gripped and by slide compartment 26 that does not make the far end of the slides available to slide transfer means 18. Accordingly, such a configuration would not work with Kerr and would result in less contact area between slide transfer means 18 and the slide resulting in a less stable engagement.

If additional time is required, please consider this a petition therefore and charge any shortages in fees, or apply any overpayment credits, to Baker & Daniels LLP's Deposit Account No. 02-0390 (975270.66). However, please do not include the payment of issue fees.

Respectfully submitted,



Ryan C. Barker, Reg. No. 47,405
BAKER & DANIELS LLP
300 N. Meridian St., Suite 2700
Indianapolis, IN 46204
Telephone: (317) 237-8690
Fax: (317) 237-8470